IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

1. S.B. Criminal Appeal No.359/2002

Mohan Singh @ Brijmohan S/o Ramkhiladi @ Khiladi
...Accused-Appellant
Versus
State of Rajasthan
...Respondent

2. S.B. Criminal Appeal No.582/2002

Banwarilal S/o Jangliram
...Accused-Appellant
Versus
State of Rajasthan
...Respondent

Date of Judgment :::: 15th March, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Presence in Both Appeals:-

Shri S.S. Sunda with
Shri Vipul Jaiman, Counsel for accused-appellants
Shri S.N. Gupta, P.P., for the State
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By the Court:-

Heard learned counsel for the parties.

These two appeals, on behalf of accused Mohan Singh @ Brijmohan S/o Ramkhiladi @ Khiladi and Banwarilal S/o Jangliram, are directed against the common judgment dated 8.3.2002 passed by the Additional Sessions Judge (Fast Track) Alwar, in

Sessions Case No.73/2001 (32/2K)(7/2K), therefore, both the appeals are being disposed of by this common judgment.

The trial court has convicted and sentenced both the accused-appellants as under:-

Accused Banwarilal And Accused Mohansingh @ Brijmohan	Under Section 366A IPC – To undergo five years rigorous imprisonment and a fine of Rs.500/- each; in default of payment of fine, to further undergo five months additional rigorous imprisonment. Under Section 376 IPC – To undergo ten years rigorous imprisonment and a fine of Rs.1,000/- each; in default of payment of fine, to further undergo ten months additional rigorous imprisonment.

Learned counsel for the appellants did not challenge the conviction of the accused-appellants passed by the trial court under Sections 366A and 376, IPC, and contended that the accused-appellants have already remained in jail for about five years and five months, therefore, their sentence of imprisonment under Section 376, IPC, may be reduced to a period of imprisonment already undergone by them.

Exhibit P-14, a written-report, was lodged on 3.1.2000 by complainant Chiranjilal (PW-13), the

father of prosecutrix Kamli (PW-1) stating therein that her daughter Kamli Bai, aged about 13 to 14 years, has been abducted by Banwarilal. He searched Banwarilal and his daughter, but they could not be traced out, therefore, a report be lodged.

On the basis of the above report, a case under Section 363, IPC, was registered. The Investigating Agency recovered the prosecutrix Kamli Bai and after recording her statements under Sections 161 and 164, Cr.P.C., by Judicial Magistrate, the offence under Section 366A and 376 IPC were added and, after completion of investigation, a challan was filed. The trial court framed charge under Sections 366A and 376 (g), IPC.

I have considered the statements of Kamli (PW-1), the prosecutrix, and her father Chiranjilal (PW-13) and, from their statements, I find specific allegation against both the accused-appellants of offence under Sections 366A as well as 376 IPC. I have also considered the finding of the trial court, which has recorded a finding that Kamli was less than 16 years of age at the time of occurrence. It has relied upon the school-certificate (Exhibit P-21), wherein the date of birth of Kamli has been mentioned as 6.4.1985. The other evidence has also been considered. I have also examined the statement

of the prosecutrix recorded under Section 164, Cr.P.C. (Exhibit P-4), the medical-report (Exhibit P-9) about her sexual assault and another medical-report (Exhibit P-27) in respect of her age, and, after considering all these documents, I am of the view that the learned counsel for the appellants rightly did not press the appeal on merits and the order of conviction passed by the trial court is correct and it does not call for any interference by this Court.

So far as reduction of sentence of imprisonment under Section 376, IPC, is concerned, the learned counsel for the appellants has referred the letters (Exhibit D-1 to Exhibit D-56) written by the prosecutrix. PW-1 Kamli has admitted these letters to have been written by her, however, it has come on the record that the same were got written from Kamli by force by the accused-appellants. At Page No.3 of the statement of PW-1 Kamli, she has deposed that it is correct that she wrote on her hand “today forgive me” (AAJ MUJHE MAAPH KARNAA) and it was shown to the accused-persons before recording her statement in the trial court. However, in view of the finding of the trial court in respect of age of the prosecutrix i.e. below 16 years, the learned counsel for the appellants himself has not

challenged the finding of conviction of the accused but, certainly, I find it to be a reasonable ground to reduce the sentence of imprisonment of the accused-appellants under Section 376, IPC.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> “3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to

> the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram, (2006) 5 SCC 736, the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

“16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison.”

Although the trial court framed charge against the accused under Section 376 (g) IPC, but while awarding conviction and sentnece, it has not been specificially mentioned that the accused has been convicted under sub-section (1) or sub-section (2) of Section 376, IPC. Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed whereas under sub-section (2) of Section 376, IPC, the minimum sentence of 10 years is prescribed, but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven/ten years, as the case may be.

In the peculiar facts and circumstances of the present case, where prosecutrix PW-1 Kamli has admitted the letters (Exhibit D-1 to Exhibit D-56) to have been written by her, and that she herself wrote in her own handwriting on her hand “today forgive me” and it was shown to the accused before recording her statement in the trial court, as mentioned above, I think it fit and proper to invoke the proviso of Section 376, IPC, and, in my opinion, ends of justice will meet in case the sentence of imprisonment awarded by the trial court against the accused-appellants under Section 376, IPC, is

reduced to a period of imprisonment of seven years rigorous imprisonment.

Consequently, both the appeals are partly allowed. The conviction and sentence of both the accused-appellants under Section 366A IPC is maintained, but, while maintaining the conviction under Section 376, IPC, their sentence of imprisonment is reduced to a period of seven years rigorous imprisonment.

(Narendra Kumar Jain) J.

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